



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3909

Objector: A parent

Admission authority: Gartree High School for Gartree High School,
Leicestershire

Date of decision: 24 June 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2023 determined by Gartree High School for Gartree High School, Leicestershire.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination or by 28 February 2023 unless an alternative timescale is specified by the adjudicator. In this case I determine that part of the arrangements concerning feeder schools must be revised by 28 February 2023 and the other aspects of the arrangements which do not conform with the School Admissions Code must be revised within two months of the date of this determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent (the objector) about the admission arrangements (the arrangements) for Gartree High School (the school), an academy school for children aged 11 to 16 for September 2023. The objection is to the selection of feeder schools in the arrangements.

2. The local authority for the area in which the school is located is Leicestershire County Council (the County Council) and it is a party to this objection. Other parties to the objection are the objector, the academy trust and admission authority for the school, also named Gartree High School (the trust), the governing board of Gartree and Leicester City Council (the City Council).
3. The referrer made similar referrals to the 2023 admission arrangements for two other secondary schools in the area, Beauchamp College (Beauchamp) and Manor High School (Manor). These are considered in determinations ADA3907 and ADA3908 respectively.

Jurisdiction

4. The terms of the Academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust on that basis. The objector submitted her objection to these determined arrangements on 25 March 2022.
5. The 2023 arrangements are the same as the arrangements for 2022 apart from changes to dates. The 2022 arrangements were subject to consideration by me and another adjudicator under section 88I of the Act. That determination (REF3893) was published on 29 April 2022. The 2022 arrangements had been referred to us by the same person who has raised the same matters in this objection to the 2023 arrangements.
6. I have considered Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations) which says “For the purpose of section 88H(5)(d), where the adjudicator has determined an objection to the admission arrangements of a school or Academy, no objection may be referred to the adjudicator raising the same or substantially the same issues in relation to those admission arrangements within 2 years of the decision by the adjudicator.”
7. The objector’s referral of the 2022 arrangements was made on 1 November 2021. Regulation 23 of the regulations and paragraph 3.5 of the Code require that for consideration under section 88H of the Act, objections must be made to the adjudicator by 15 May each year. Because this requirement was not met, we could not consider the 2022 arrangements under section 88H of the Act as an objection. Therefore, I have concluded that because the 2022 arrangements were not considered as an objection under section 88H, but as a referral under section 88I, Regulation 22 does not apply.
8. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

9. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

10. The documents I have considered in reaching my decision include:

- a. minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 25 March 2022, supporting documents and subsequent correspondence;
- d. correspondence with the other parties concerning the objection; and
- e. determination REF3893 concerning the arrangements for 2022.

11. As explained above, had determination REF3893 been considered under section 88H of the Act rather than section 88I, the current objection would have been prohibited by regulations because it raises the same matters as were considered in REF3893. The current objection was submitted on 25 March 2022 more than one month before REF3893 was published and was based on the same documents as the previous referral. I formed the view that I could only reach a different conclusion to those reached in REF3893 if there had been a change in circumstances in the area served by the school affecting school admissions. I asked all parties to tell me about any such change in circumstances.

12. The trust and both local authorities told me that they knew of no such change. The objector raised some issues with me that I will discuss below.

The Objection

13. The objection began by quoting Appendix 1 of the Code in which relevant legislation is set out, beginning with the Equality Act 2010 (EA). This includes provisions on indirect discrimination and the Public Sector Equality Duty (PSED). The referrer argued that because St Thomas More, a primary school with a Roman Catholic religious designation, was not included as a feeder school for Gartree, children attending St Thomas More were indirectly discriminated against on the basis of religion or belief and that the admission authority had not complied with its responsibilities under the PSED to consider whether its admission arrangements advance equality of opportunity between people who share a protected characteristic and those who do not share it.

14. The referral quoted paragraph 1.8 of the Code which states: "Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and

that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements must include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.” The referral also referred to paragraph 1.15 of the Code: “Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds.”

15. The referral also alleged that the consultation undertaken by the admission authority before determining the arrangements was ineffective and did not conform with the requirements for consultation set out in the Code. Paragraph 1.45 of the Code says that consultation is required when admission authorities are proposing changes to their arrangements for the next year or if consultation has not taken place for seven years. These arrangements are the same as those for 2022 and there has been consultation within seven years, therefore, no consultation was required, and I have not considered this part of the objection.

Other Matters

16. In REF3893 we found that the arrangements did not conform with the requirements of the Code in other ways. These concerned the clarity of parts of the arrangements, the fairness of parts of the arrangements, consideration of parental occupations and the operation of the waiting list. We required that these matters were addressed within two months of that determination (that is by 29 June 2022). The 2023 arrangements are the same as the 2022 arrangements and so do not meet requirements in the same ways. When the trust determined the 2023 arrangements it was before REF3893 had been published and so the trust would not have known our findings on these matters and could not have been expected to address them at that time. The 2023 arrangements are the same as the 2022 arrangements and so do not meet requirements in the same ways. I will not refer to these in detail in this determination other than to require the 2023 arrangements are revised within two months of its publication.

Background

17. Gartree is a secondary school for children aged 11 to 16 situated in Oadby on the south-eastern edge of the conurbation of Leicester. It is, however, in the administrative area of Leicestershire less than a mile and a half from the boundary between the two authorities. Its site is adjacent to Beauchamp and less than a mile and a half from Manor.

18. The published admission number (PAN) is 185 and the oversubscription criteria can be summarised as:

1. Looked after and previously looked after children
2. Children with siblings at the school

3. Children who attend one of the 12 named feeder schools
4. Children with a serious medical condition or domestic needs that make it essential that they attend the school
5. Children living nearest to the school.

19. Prior to a reorganisation of education in the area in 2017, the school was part of a three-tier system of schools. This can be visualised as a pyramid with several schools for children in Reception to Year 5 at the bottom feeding into two schools for Year 6 to Year 9 and then into a single school for Year 10 to Year 13 at the top. Until that date, Gartree and Manor were for Years 6 to 9 with transfer to Beauchamp in Year 10. Since 2017, all three secondary schools have admitted children into Year 7. Beauchamp is the only one with a sixth form.

20. In REF3893 we found that the arrangements did not result in unlawful indirect discrimination on the grounds of religion or belief, and we did not find that the school failed to meet its duties under the PSED when determining its arrangements.

21. We did find, however, that the feeder schools were not selected on reasonable grounds. Whilst the reasons for the selection of feeder schools given by the admission authority were reasonable, it was clear from the evidence presented to us that the selection could not have been made, or wholly made, on those grounds. Some of the feeder schools only share a few of the characteristics described by the admission authority as its reasons for its selection of the feeder schools while we identified other schools which share more of those characteristics but were not included. This is not reasonable, and we therefore found that the arrangements did not conform with paragraph 1.15 of the Code.

22. In setting a deadline for this aspect of the 2022 arrangements to be reviewed we took into account the timing of the referral and the determination. The referral was made after applications for the school for 2022 had been made. The determination was made after places for 2022 had been allocated. The only children who would be affected by any changes to the arrangements would be those on the waiting list if any places became available. We could not find any unfair disadvantage arising from the 2022 arrangements and considered that the risk of new unfairness arising from introducing a revision of this aspect of the arrangements in haste without thorough modelling and consultation with the local authorities, other schools and parents outweighed any benefit which might accrue from it. We therefore set a deadline, as the Code allows, of 28 February 2023 for the revision of this part of the arrangements for 2022 to take place.

Consideration of Case

23. This objection was lodged before the determination on the 2022 arrangements was published. The arrangements for 2023 are the same as those for 2022 other than as described above. Both local authorities and the admission authority told me they knew of no change in circumstances which might lead me to reach a different conclusion on the 2023

arrangements to that reached on the 2022 arrangements. The objector put forward her observation that some circumstances had changed.

24. One of the issues we identified in REF3893 was the difficulty that could be experienced by a family moving into an area where a feeder school system operates after the initial allocation of primary school places. If all feeder schools were full such a family would have to send their children to primary schools outside of the area, or one in the area which was not a feeder school for the local secondary school. It is not unusual for a family moving into an area after places have been allocated to find that all local schools are full, and they must send their children out of the area. However, if admission to the local secondary school is based on attendance at local primary schools, then the disadvantage to those children arriving in the area after primary school places have been filled is perpetuated and may be unfair. The data we looked at in REF3893 suggested to us that places would be available in feeder schools for families moving into the area and so no unfairness arose in practice. That data was from the annual school census, the most recent version available at the time was from January 2021. The change of circumstances identified by the objector was her claim that all of the feeder schools are now full in all year groups. She said she had been told by “the council” that the schools were “currently full in all year groups with waiting lists.”

25. Paragraph 2.27 of the Code requires local authorities to provide parents on request with information about places available at schools in their area and so they can do this, schools are in turn required to provide this information to their local authority. On 16 May 2022 I asked both local authorities for details of the places available in the feeder schools.

26. The information provided by the local authorities following this request is shown in the table below. It shows that while most feeder schools have no places available in most years it remains the case that any family moving into the area would be able to find a place at one of the feeder schools. It is also the case that a parent wanting to move their child to a feeder school from another local school would be able to do so, although as pointed out by the objector, not necessarily one close to their homes.

Year	R	1	2	3	4	5	6
Leicestershire (10 schools)	56	33	21	13	23	22	20
Leicester City (2 schools)	21	1	2	0	0	0	4
Total number of places available at feeder schools	77	34	23	13	23	22	24

27. I have also considered whether there has been any change in the pattern of admission to the school as was suggested by the objector. I asked the admission authority for details of the places allocated for September 2022. I was told that six places had been offered to children with an EHCP, eight to looked after children, 51 to siblings and 126 children attending feeder schools. This is a total of 191. In 2021 oversubscription was

reached at the same point with 51 places being offered to siblings and 112 to children attending feeder schools.

28. From this I conclude that the circumstances remain the same for 2023 as they were for 2022 and there is no reason for me to reach a different conclusion about the 2023 arrangements to those reached on the 2022 arrangements. The reasons given for the selection of feeder schools are individually reasonable but continue to be applied inconsistently. Therefore, the selection of feeder schools overall remains unreasonable and does not meet the requirements of paragraph 1.15 of the Code. I uphold this part of the objection.

29. In REF3893 we stated that because the selection of feeder schools did not conform with paragraph 1.15 of the Code, we did not need to consider the issues of indirect discrimination or the PSED. However, we did consider them in that determination as the issues had been raised and to assist the trust when it determines future arrangements. We found no indirect discrimination or failure to meet the PSED. In this case, there is also no need for me to consider those issues for the same reasons and I see no benefit in repeating the relevant comments from REF3893 here. I do not uphold this part of the objection.

30. The objector also pointed out that the 2023 arrangements were being considered by the adjudicator at an earlier stage in the annual admissions cycle than was the case for the 2022 arrangements. Applications will not be made until September or October 2022 and offers will not be made until March 2023. She argued that it would be possible to revise the 2023 arrangements (if I found them not to conform with the Code) in time to affect those applying in the autumn of 2022 for places in September 2023. She suggested that it would be possible simply to add St Thomas More to the list of feeder schools.

31. As we found in REF3893, children attending St Thomas More are likely to have several other secondary schools close to their homes which they would have priority for on the basis of where they lived. Children living in and attending primary schools in the rural areas to the east of Leicester do not have the same range of alternative schools close to their homes. They also have lower priority for places at secondary schools in the city than children living near St Thomas More because they live further from those schools. The number of children attending the 12 feeder schools is already greater than the number of places available at Gartree (and Beauchamp, Manor and Gartree combined). Not all children attending the existing feeder schools can be offered places. If more children were added to this pool (which would be the effect of adding St Thomas More to the list of feeders), any child offered a place because they attended St Thomas More would displace a child attending one of the other feeder schools. The displaced child may then be faced with greater difficulty in finding a place at (and travelling to) an alternative secondary school than the St Thomas More child would have. On balance, this would not be fair.

32. In REF3893 we found that the reasons for naming feeder schools were not applied consistently. There are other primary schools, including a Catholic primary school, closer to Gartree than is St Thomas More. Objective criteria that would lead to St Thomas More being added as a feeder school would also identify other schools as potential new feeder

schools and if they were not included, then it would make the selection of feeder schools more inconsistent. If, on the alternate, they were also added, it would make the problem described in the previous paragraph worse.

33. My duties under section 88H of the Act require me to determine whether or not the arrangements conform with requirements and if not, in what ways they do not so conform. This I have done. However, I cannot require the trust to revise their arrangements in any particular way. Nor can I require them to consult before doing so. It is for the trust to decide how to revise its arrangements in order to remedy the deficiencies I have identified. I do have a power to set a deadline for this and the objector has asked that I set an early deadline so that the arrangements are changed before parents will begin to apply for school places for September 2023.

34. I have given careful consideration to this. In some cases, an early deadline can sensibly be set, and it is clearly desirable that arrangements that fail to meet the Code's requirements should not continue for longer than can be avoided. In the particular circumstances of this case, it seems to me that revising these arrangements is not a trivial task. The trust will need to review which groups of children it wants to give priority to, for example, should children living in rural areas (far from other schools) have priority over those living in suburban areas (near other schools)? Having decided which groups to prioritise, the trust will need to decide whether this is best done through a feeder school system (and if so, decide the criteria for selecting feeder schools and apply them consistently), a catchment area or some other method. The various options would need to be modelled. The trust may also consider it wise to consult parents, local authorities and other schools as part of this process and this would add to the time frame. In my view, it would not be possible to do all of this properly before parents begin making applications for places in the first half of the autumn term.

35. Given that this determination is being published in the second half of the summer term, and taking account of the summer holidays when both school and trust leaders and parents of school age children tend to take their holidays, I do not consider that it would be wise for me to set a deadline for revision of the feeder school elements of the arrangements earlier than the time when parents will be applying for school places for 2023, that is before 31 October 2022. I have considered whether I could set a deadline between 31 October 2022 and 28 February 2023. Again, I have decided that this would not be right. It would mean that applications would have been made on the basis of one set of arrangements but then considered on the basis of another set – which would not have been known to parents at the time they expressed their preferences.

36. In REF3893 we found that although the arrangements did not conform with the Code, they did not prevent children living in the area of concern to the objector from finding secondary school places within an acceptable distance of their home. I have considered the change of circumstances identified by the objector and found that there is no change in those circumstances. No other parties identified any change in circumstances. I therefore conclude that there is no urgent requirement for the parts of the 2023 arrangements concerning feeder schools to be revised quickly that would override my concern that a hasty

revision could introduce unforeseen unfairness. I am therefore requiring that this aspect of the arrangements is revised by 28 February 2023 in accordance with paragraph 3.1 of the Code.

Summary of Findings

37. In REF3893 the 2022 arrangements for this school were considered under section 88I of the Act and found not to conform with the requirement in the Code in that the selection of feeder schools was not reasonable. No indirect discrimination on the grounds of religion or belief was found and it was not found that the admission authority failed to observe the PSED. It was also found that the arrangements did not conform with the requirements of the Code in other ways.

38. The arrangements for 2023 were determined and the objection made before REF3893 was published. The 2023 arrangements are the same as those for 2022. Had the 2022 arrangements been considered under section 88H of the Act, then my consideration of this objection would have been prohibited by the regulations as it raises the same issues as those considered in REF3893. I considered that unless there had been a change in circumstances, I could not reach a different conclusion regarding the 2023 arrangement to those conclusions reached in REF3893.

39. No changes in circumstances were identified by the admission authority or the two local authorities. I have investigated the changes in circumstances asserted by the objector. However, these circumstances appear to me to be unchanged. I therefore find no reason to reach a different decision to that in REF3893. The arrangements do not conform with paragraph 1.15 of the Code in regard to the selection of feeder schools and so I uphold this part of the objection. I do not find that the selection of feeder schools causes indirect discrimination or disregards the PSED and so I do not uphold this part of the objection. I do find that the arrangements do not conform with the Code in other ways and must be revised accordingly.

Determination

40. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2023 determined by Gartree High School for Gartree High School, Leicestershire.

41. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

42. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination or by 28

43. February 2023 unless an alternative timescale is specified by the adjudicator. In this case I determine that part of the arrangements concerning feeder schools must be revised by 28 February 2023 and the other aspects of the arrangements which do not conform with the School Admissions Code must be revised within two months of the date of this determination.

Dated: 24 June 2022

Signed:

Schools Adjudicator: Phil Whiffing